

ORIGINAL



0000092390

**BEFORE THE ARIZONA CORPORATION COMMISSION**

KRISTIN K. MAYES  
Chairman

2009 JAN 13 P 4: 41

GARY PIERCE  
Commissioner

AZ CORP COMMISSION  
DOCKET CONTROL

PAUL NEWMAN  
Commissioner

SANDRA D. KENNEDY  
Commissioner

Arizona Corporation Commission  
**DOCKETED**

BOB STUMP  
Commissioner

JAN 13 2009

DOCKETED BY	
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IN THE MATTER OF THE  
APPLICATION OF ARIZONA PUBLIC  
SERVICE COMPANY, IN  
CONFORMANCE WITH THE  
REQUIREMENTS OF ARIZONA  
REVISED STATUTES §§ 40-360, *et seq.*,  
FOR A CERTIFICATE OF  
ENVIRONMENTAL COMPATIBILITY  
AUTHORIZING THE TS-5 TO TS-9  
500/230kV TRANSMISSION LINE  
PROJECT, WHICH ORIGINATES AT  
THE FUTURE TS-5 SUBSTATION,  
LOCATED IN THE WEST HALF OF  
SECTION 29, TOWNSHIP 4 NORTH,  
RANGE 4 WEST AND TERMINATES AT  
THE FUTURE TS-9 SUBSTATION,  
LOCATED IN SECTION 33, TOWNSHIP  
6 NORTH, RANGE 1 EAST, IN  
MARICOPA COUNTY, ARIZONA

Docket No. L-00000D-08-0330-00138

Case No. 138

**REQUEST FOR REVIEW**

**INTRODUCTION**

In accordance with A.R.S. § 40-360.07(A), APS, the Applicant in the above-captioned matter, respectfully submits this request for review of a limited portion of the Certificate of Environmental Compatibility ("CEC") filed by the Arizona Power Plant and Transmission Line Siting Committee ("Committee") on December 29, 2008.

1 APS greatly appreciates the time and consideration provided by the Committee in  
2 this matter, and agrees with the Committee's unanimous decision to issue a CEC for the  
3 TS-5 to TS-9 Project ("Project") and the Committee's unanimous finding that the Project  
4 is needed.

5 APS specifically requests that the Commission widen the approved corridor along  
6 State Route 74 for a variety of reasons that are addressed in the Discussion sections of this  
7 request:

- 8 • Section I of the Discussion identifies specific revisions that must be made to  
9 address a mistaken assumption made during Committee deliberations that  
10 would render the Project unbuildable.
- 11 • Section II requests revisions to avoid bifurcating public lands and to  
12 recognize the fact that the ultimate right-of-way will be dependent on an  
13 extensive federal permitting process that will consider alternatives other than  
14 the specific corridor approved by the Committee.
- 15 • Section III requests limited revisions to a two-mile stretch of the corridor to  
16 reduce the likelihood of construction constraints that would necessitate the  
17 incorporation of additional turning structures and other costly equipment.

18 Included as Attachment 1 is a map that illustrates the requested corridor revisions.

19 This Request raises important policy considerations that are best addressed by the  
20 Arizona Corporation Commission ("Commission") under A.R.S. § 40-360.07(B), which  
21 provides that the Commission "balance in the broad public interest, the need for an  
22 adequate, economical and reliable supply of electric power with the desire to minimize the  
23 effect thereof on the environment and ecology of this state." Granting this Request will  
24 reduce the chance of conflicting decisions between state and federal authorities that have  
25 delayed other transmission projects.

## 1 BACKGROUND

2 On July 1, 2008, APS filed an Application for a CEC authorizing construction of  
3 the Project. Over the course of sixteen days of evidentiary hearings and deliberations,  
4 there was substantial discussion concerning the need for this Project and the environmental  
5 impacts associated with various proposed routes.

6 The evidence in the case demonstrated that this Project is needed for a number of  
7 reasons:

- 8 • The Project is a critical component of the solar highway that will provide  
9 scheduling capacity from the Palo Verde Hub, the proposed interconnection  
10 point for potentially 4,600 MW of renewable energy, to the load center in  
11 the Phoenix metropolitan area. Tr. 981:11-982:22; 1145:12-1146:22.
- 12 • The Project will mitigate several extreme contingencies that would  
13 otherwise result in shedding loads of up to 1,355 MW, enough capacity to  
14 serve approximately 325,000 homes. Tr. 977:24-978:2.
- 15 • The 500kV circuit will provide reliability and scheduling benefits as an  
16 important link in a series of transmission lines that includes other recent  
17 Commission decisions (Palo Verde to Pinal West, Case 124, Decision No.  
18 67012 (May 24, 2004); Pinal West to Southeast Valley, Case 126, Decision  
19 No. 68291 (Nov. 14, 2005); Palo Verde Hub to TS-5, Case 128, Decision  
20 No. 68063 (Aug. 17, 2005); and TS-9 to Pinnacle Peak, Case 131, Decision  
21 No. 69343 (Feb. 20, 2007)). Tr. 973:5-975:4.
- 22 • The Project will provide a second source of power to the new TS-5  
23 substation. Tr. 975:8-976:2.
- 24 • The 230kV circuit is needed to serve the dozens of new developments  
25 planned in this area. Tr. 145:14-151:12.

1 With respect to environmental impacts, the testimony of the numerous intervenors  
2 focused first and foremost on the impacts of the Project on conceptual plans for privately-  
3 owned future developments. In the eastern portion of the Project, four intervenors (two  
4 private developers, a homeowners association affiliated with one of the developers, and  
5 the City of Peoria) opposed APS's preferred route ("Segment 4" and "Segment 5") and  
6 APS's suggested alternative ("Alternative 3") because the corridors included private lands  
7 that had preliminary or conceptual<sup>1</sup> plans for future development.

8 Presumably as a result of the intervenors' testimony, the Committee rejected  
9 Segment 4 and Segment 5, without discussion during deliberations, and chose, by majority  
10 vote, a modified version of Alternative 3 ("Alternative 3-Public Lands" or "Alternative 3-  
11 North") along SR 74. This modified corridor benefits private landowners in the area  
12 because it: (1) completely avoids three miles of private lands; and (2) requires that the  
13 Project be placed at least 500 feet from SR 74. In explaining his support for Alternative 3-  
14 Public Lands, Chairman Foreman stated:

15 This analysis, it seems to me, unfairly undervalues the interests of the State  
16 Land Department, but that is a function of the way the statute is drafted and  
17 maybe that needs to be revisited, but State Land and BLM it seems to me  
18 come out unfairly underrepresented in this analysis. That's the reason that I  
19 support the Alternative 3-North as modified (Tr. 3479:23-3480:4).

20 In this instance, the Committee's decision did benefit private interests at the  
21 expense of the public lands on which the Alternative 3-Public Lands corridor is sited.  
22 First, the 500-foot wide buffers along SR 74 bifurcate public lands managed by the U.S.  
23 Bureau of Land Management ("BLM") and the Arizona State Land Department  
24 ("ASLD"). ASLD opposed the Alternative 3-Public Lands corridor specifically because it

25 <sup>1</sup> The plans of one private landowner located along Segment 4 and Segment 5, and adjacent to SR 74  
26 (Alternative 3), are so indefinite that its witness could not provide an estimate of the number of residential  
lots within APS's preferred corridor. Tr. 2735:15-16 ("I couldn't give you a firm number, and I wouldn't  
speculate").

1 starts 500 feet south of the SR 74 centerline, thereby creating a strip of State Land between  
2 the transmission line and SR 74. *See* Tr. 3212:23-3213:8.

3 In addition to public land bifurcation, there are other concerns raised by the  
4 Committee's placement of the corridor exclusively on public lands. As part of the BLM's  
5 independent consideration of the Project, the federal agency must consider reasonable  
6 alternatives to the Committee's proposed corridor. As a result, there is no guarantee that  
7 BLM will grant APS a right-of-way within the corridor approved by the Committee. As  
8 Gordon Cheniae, former BLM manager and intervenor Diamond Ventures' witness,  
9 testified: "BLM will do what it wants." Tr. 2599:20.

10 Finally, because the CEC prohibits APS from constructing any portion of the  
11 Project on lands owned by one private party, and there are no other alternatives available  
12 to APS, the Project cannot be constructed or operated as approved by the Committee.

13 Given the important needs met by this Project, which will facilitate the delivery of  
14 clean, renewable and reliable power to its customers, APS recommends that the  
15 Commission provide itself, BLM, ASLD, the public, and APS with sufficient flexibility to  
16 identify and authorize jointly acceptable routes so that this important infrastructure project  
17 can move forward without undue cost, uncertainty, and the need for subsequent  
18 proceedings before the Commission.

## 19 **DISCUSSION**

### 20 **I. Modifications are necessary to construct the Project in the corridor approved** 21 **by the Committee.**

22 In furtherance of the Committee's desire to minimize impacts to one private  
23 landowner, the CEC prohibits APS from constructing the Project on lands "owned by  
24 Diamond Ventures east and west of the 163<sup>rd</sup> Avenue alignment and south of SR 74."  
25 CEC page 6, lines 9-10. In so doing:  
26

1 The Committee ... assumed it would be physically possible to thread the  
2 line from south of SR 74 approaching the 163<sup>rd</sup> Avenue alignment from the  
3 west to north of SR 74 heading on east of the 163<sup>rd</sup> Avenue alignment  
without directly impacting the Diamond Ventures properties ....

4 See December 29, 2008, Procedural Order and Notice of Filing.

5 The Committee's assumption was in error. Because Diamond Ventures' properties  
6 are contiguous to both sides of the 163<sup>rd</sup> Avenue alignment, the Project cannot be built  
7 given the prohibition against constructing the line on any portion of Diamond Ventures'  
8 properties. While it is not clear whether it will be necessary to locate towers on Diamond  
9 Ventures' property, at a minimum it will be necessary for the conductors to overhang  
10 Diamond Ventures' property.

11 Accordingly, in the event the Commission denies the requests in Section II and  
12 wishes to uphold the desires of the private landowners and preclude the placement of the  
13 Project on any private lands along SR 74, with any plans for residential development, the  
14 following revision is necessary to provide APS with the ability to construct the Project:

15 Delete text on page 6, lines 5 through 10, and replace with the following:

- 16 • A 1,000 foot-wide corridor, measured westward from the centerline of the 163<sup>rd</sup>  
17 Avenue alignment, which crosses SR 74 from south to north and connects that  
18 portion of the corridor south of SR 74 with that portion of the corridor north of  
19 SR 74. No portion of the transmission supporting structures to be constructed in  
20 this segment of the corridor shall be constructed upon the property designated  
21 Village 'E' in the record (Exhibit DV-13, slide 7L) owned by Diamond  
22 Ventures; however, the Project's conductors may overhang the property.

23 This requested change would move the approved corridor off of land planned for  
24 residential development and would preclude the placement of structures on land with  
25 preliminary plans for commercial development, but would at least allow APS to overhang  
26

1 a portion of the future commercial development so that the Project can be constructed and  
2 operated.

3 **II. Because federal and other state regulatory approvals are required, flexibility is**  
4 **needed.**

5 **A. ASLD's position concerning the 500-foot buffers along SR 74 can and**  
6 **should be honored.**

7 Because Alternative 3-Public Lands creates 500-foot strips of land between SR 74  
8 and the Project, the corridor conflicts with ASLD's policy to place transmission lines  
9 along section lines or other linear features such as roads. See Tr. 3212:23-3213:8.

10 In this case, APS agrees with ASLD that the land adjacent to and within 500 feet of  
11 SR 74 should be included in the authorized Project corridor. Widening the corridor to  
12 include the land adjacent to and within 500 feet of SR 74 would allow APS and ASLD to  
13 work together to identify a route that comports with ASLD's policy and does not  
14 unnecessarily bifurcate ASLD lands. Similarly, it would provide APS and BLM the  
15 opportunity to avoid bifurcating federal lands.

16 **B. The federal government will independently review of the Project.**

17 By approving the Alternative 3-Public Lands corridor and declining to approve a  
18 contingency for this segment of the route, the Committee has made the CEC's  
19 effectiveness entirely dependent on BLM's agreement with the Committee regarding the  
20 merits of the approved route.

21 The question before the Commission is, in the event that BLM chooses a different  
22 route, should the conflict be resolved through an automatic contingency or through a new  
23 proceeding before the Commission? APS respectfully requests that the Commission  
24 include a contingency for the following reasons.

25 **1. BLM must consider alternatives to Alternative 3-Public Lands.**

26 As a federal agency, BLM is subject to the National Environmental Policy Act  
("NEPA"), 42 U.S.C. §§ 4321 to 4370f. Compliance with NEPA requires BLM to

1 seriously consider alternatives to Alternative 3-Public Lands. Under NEPA, all federal  
2 agencies shall:

3 . . . (C) include in every recommendation or report on proposals for  
4 legislation and other major Federal actions significantly affecting the  
5 quality of the human environment, a detailed statement by the responsible  
6 official on ...

7 (iii) alternatives to the proposed action, ...

8 (E) study, develop, and describe appropriate alternatives to recommended  
9 courses of action in any proposal which involves unresolved conflicts  
10 concerning alternative uses of available resource . . . .

11 42 U.S.C. § 4332. In this case, BLM will consider alternatives because Alternative 3-  
12 Public Lands involves unresolved conflicts with the plans and goals of other entities.  
13 Specifically, Alternative 3-Public Lands conflicts with BLM's existing and proposed  
14 management plans and is opposed by the Sierra Club, North Country Conservancy, and  
15 the Arizona Game and Fish Department, among others, due to its impacts on the scenic  
16 and undisturbed nature of the land north of SR 74. *See* letter from Arizona Game and Fish  
17 Department to URS Corporation, Aug. 11, 2008 (Exhibit A-12); letter from Sierra Club to  
18 Arizona Public Service Project Manager, Jan. 22, 2008, and letter from North Country  
19 Conservancy to APS Project Manager, Dec. 12, 2007 (Exhibit B-2, "Public Involvement  
20 Information," Tab-Other Correspondence, in Hearing Exhibit A-1, "Application for a  
21 Certificate of Environmental Compatibility").

22 **2. Routes within 500 feet of SR 74 and south of SR 74 are reasonable**  
23 **alternatives that BLM would have to consider.**

24 One alternative that BLM would likely consider is a route adjacent to SR 74. It  
25 would not be surprising for BLM to consider, and ultimately choose, a route that does not  
26 bifurcate public lands and does not result in a 500 foot strip of land between SR 74 and the  
Project.



1 A route south of SR 74 is another alternative that might be compelling to BLM for  
2 a number of reasons. First, it would better apportion the impacts of the Project on state,  
3 federal, and private lands. The corridor approved in the CEC crosses six miles of BLM  
4 land along SR 74; approximately five miles north of SR 74, and one mile south of SR 74.  
5 In contrast, a route along the south side of SR 74 would distribute the burden by utilizing  
6 three miles of private lands, two miles of BLM lands, and one mile of state trust land. *See*  
7 Exhibit A-2, "Surface Management," in Hearing Exhibit A-1, "Application for a  
8 Certificate of Environmental Compatibility."

9 Second, BLM's plans for the public lands do not contemplate development and  
10 disturbance, whereas the private and state lands south of SR 74 do. *See* Exhibit H-1,  
11 "Development Map" in Hearing Exhibit A-1. Third, although ultimately there will be  
12 disturbances south of SR 74, the private landowner's plans for its lands are still very  
13 preliminary at this time and subject to modification. Tr. 2735:15-16.

14 **3. A subsequent proceeding to modify the CEC would impose**  
15 **significant burdens on the Commission, Commission Staff, APS,**  
16 **intervenors, and the public.**

17 This case engendered intense interest, as 17 intervenors demonstrate. Several years  
18 from now, the Northwest Valley will have many more homes, many more planned  
19 developments, and an urgent need for electric infrastructure. If the BLM rejects the route  
20 recommended by the Committee, revisiting Case 138 at that time to identify an acceptable  
21 route would be highly inefficient, controversial and time-consuming; would impose  
22 significant burdens on the Commission and its Staff; and would not comport with the  
23 Commission's goal to have utilities engage in long-term infrastructure planning.

24 A preferable approach is to expand the approved corridor along SR 74, thereby  
25 avoiding the need for a future hearing in the event BLM approves a route along SR 74 that  
26

1 differs from the corridor chosen by the Committee. Alternatively, the Commission could  
2 approve Segments 4 and 5 of the Preferred Route, which do not cross BLM lands at all.<sup>2</sup>

3 **4. A replay of Line Siting Case 111 should be avoided.**

4 The possibility of a federal land manager disagreeing with the Committee's route  
5 selection is not idle speculation. A transmission line that, in 1999, the Commission  
6 ordered be built still has not been constructed because the recipients of a CEC for the line  
7 have not been able to obtain a right-of-way over federal land within the corridor identified  
8 in the CEC.<sup>3</sup>

9 In Case 111, the applicants requested a CEC approving two discrete routes – the  
10 preferred Western Route and an alternative Central Route. Both routes passed through  
11 land managed by the U.S. Forest Service, but the applicants believed they had a better  
12 chance of obtaining a right-of-way for the Central Route because it followed the right-of-  
13 way for an existing natural gas pipeline. The applicants asked the Commission and the  
14 Committee to approve both routes and to include a condition in the CEC authorizing them  
15 to construct the project along the Central Route only if a necessary approval or permit for  
16 the Western Route was denied or they had “reliable information” that it was going to be  
17 denied or unacceptably delayed. Case 111, Applicants’ Joint Petition for Review (Nov. 2,  
18 2001). Despite the applicants’ prescient concerns, the CEC authorized only the Western  
19 Route. Decision No. 64356 (Jan. 15, 2002).

20 <sup>2</sup> Despite the fact that extensive evidence was presented supporting segments 4 and 5 of the Preferred  
21 Route, the Committee did not discuss this option during deliberations concerning the eastern portion of the  
22 Project. Similarly, the Committee did not discuss Segment 2 during deliberations when it chose  
Alternative 1.

23 <sup>3</sup> By Order dated November 2, 1999, the Commission ordered Citizens Utilities Company to comply with a  
24 settlement agreement between Citizens and Commission Staff requiring Citizens “to build a second  
25 transmission line to service its customers in Santa Cruz County by December 31, 2003.” Decision No.  
26 62011 (Docket No. E-01032A-99-0401), appended as Attachment 2. Line Siting Case No. 111 (Docket  
No. L-00000C-01-0111-00000) is the CEC proceeding for the transmission line intended to satisfy the  
Commission’s order in Decision No. 62011. The Committee took administrative notice of Decision Nos.  
62011 (Docket No. E-01032A-99-0401) and 64356 (Docket No. L-00000C-01-0111-00000). See Tr.  
3163:20-3164:19. APS respectfully requests that the Commission take administrative notice, under R14-3-  
109(F), of Docket No. L-00000C-01-0111-00000.

1 Although the Commission approved a corridor two miles wide for the Western  
2 Route, more than nine years have passed since the Commission's order to construct the  
3 line and the Forest Service has still not issued a right-of-way. *See* TEP's 2008 Self-  
4 Certification Letter, appended at Attachment 3. As a result, the Commission has had to  
5 reopen Case 111, Decision No. 67509 (Jan. 20, 2005) (appended at Attachment 4), and the  
6 needed line will not be constructed for several more years.

7 Case 111 highlights the important principles present in this case: obtaining rights-  
8 of-way from federal agencies can take many years and the results are unpredictable. By  
9 approving both corridors in the initial CEC and including an appropriate contingency  
10 condition, the parties could have obtained the result that is still being sought with much  
11 greater efficiency.

12 Similarly, by approving a wider corridor to Alternative 3-Public Lands, the  
13 Commission can require APS to try to obtain a right-of-way within the Committee's  
14 desired corridor, and at the same time, increase the possibility that the line can be  
15 constructed without further regulatory proceedings and concomitant burdens on the  
16 Commission and the public.

17 **C. The requested revisions comply with both A.R.S. §§ 40-360.06 and**  
18 **40-360.07.**

19 Some Committee members expressed concern that A.R.S. § 40-360.06 valued  
20 private landowners' plans above the plans of government agencies. *See, e.g.,* Tr. 3479:23-  
21 3480:4. It is APS's position that all plans must be considered, including state, local, and  
22 private under A.R.S. § 40-360.06(A)(1); and federal under A.R.S. § 40-360.06(A)(2), (4),  
23 (5), (6), and (9). Here, while the private landowners have tentative plans to build roads  
24 and houses, BLM's plans do not include development on public lands.

25 Ultimately, the Commission must decide how to balance the desire to minimize  
26 potential impacts on private landowners against the plans of public agencies and the need

1 for the Project. APS respectfully suggests that this balance can best be accomplished by  
2 making revisions to the CEC as follows:

3 1. Replace page 6, line 5 through page 7, line 2 with the following:

- 4 • A 1,000 foot-wide corridor, measures westward from the centerline of the  
5 163<sup>rd</sup> Avenue alignment, which crosses SR 74 and connects that portion of  
6 the corridor south of SR 74 with that portion of the corridor north of SR 74.
- 7 • A 3,500 foot-wide corridor that extends east along SR 74 for approximately  
8 6.2 miles from the 163rd Avenue alignment to the eastern boundary of  
9 Township 6 North Range 1 West (the 115th Avenue alignment). The  
10 corridor includes 2,000 feet north and 1,500 feet south of the centerline for  
11 SR 74.
- 12 • A 2,000 foot-wide corridor that extends east along SR 74 for approximately  
13 2.1 miles from the 115th Avenue alignment to the 99th Avenue alignment in  
14 Section 33, Township 6 North, Range 1 East. The corridor includes 2,000  
15 feet south of the centerline of SR 74.

16 2. Insert after page 7, line 17:

17 In the initial right-of-way applications necessary for rights-of-way across  
18 BLM or ASLD lands for that portion of the Project between the 163rd  
19 Avenue alignment and the 99th Avenue alignment, the Applicant shall  
20 request a route within the Alternative 3-North corridor as depicted in Exhibit  
21 A. However, if either BLM or ASLD: (1) does not grant APS a right-of-way  
22 inside the Alternative 3-North corridor within three years of the initial right-  
23 of-way application; or (2) denies APS's initial application, whichever occurs  
24 first, then APS may acquire right-of-way anywhere within the wider corridor  
25 authorized by this CEC.  
26

1 This suggested corridor is narrower than originally requested and, in conjunction with the  
2 suggested condition to seek approval from BLM and ASLD for the corridor approved by  
3 the Committee, strikes an appropriate balance among the various interests that the  
4 Commission must consider.<sup>4</sup>

5 **III. CEC modifications should be made to address construction constraints in one**  
6 **limited area of the corridor.**

7 Between the 179<sup>th</sup> Avenue and the 163<sup>rd</sup> Avenue alignments, the approved corridor  
8 width is 1500 feet, all south of SR 74. In this area, APS requests an 850 foot-wide  
9 extension of the corridor to mitigate construction constraints that could occur if the  
10 corridor is not expanded.

11 **A. The approved corridor creates potential construction constraints.**

12 At the intersection of the 179<sup>th</sup> Avenue alignment and the Joy Ranch Road  
13 alignment, the approved corridor takes a sudden turn. West of the 179<sup>th</sup> Avenue  
14 alignment, the corridor width is up to 2640 feet in width, and includes the land between  
15 the Joy Ranch Road alignment and SR 74. East of the 179<sup>th</sup> Avenue alignment, the  
16 corridor starts at SR 74 but does not extend all the way to the Joy Ranch Road alignment,  
17 stopping 850 feet short. As a result, if the line is constructed along Joy Ranch Road  
18 alignment west of SR 74, at least two sets of costly turning structures would be needed at  
19 the 179<sup>th</sup> Avenue alignment to jog north and then again east within the approved corridor.  
20 Extending the corridor east of the 179<sup>th</sup> Avenue alignment to include the Joy Ranch Road  
21 alignment would allow APS to work with the only affected landowner, ASLD, to design  
22 and construct the line in a linear fashion along the Joy Ranch Road alignment for nine  
23 consecutive miles, from the 235<sup>th</sup> Avenue alignment to the 163<sup>rd</sup> Avenue alignment. As  
24  
25

26 <sup>4</sup> Even if the Commission does not elect to expand the corridor on private lands along SR 74, the corridors  
on public lands should be widened to include the lands within 500 feet of SR 74.

1 discussed earlier, ASLD prefers that lines follow section lines (Tr. at 3212:23-3213:8) ,  
2 and so this requested revision would be consistent with ASLD's preference.

3 A second constraint is located at the intersection of the 171<sup>st</sup> Avenue alignment and  
4 the Joy Ranch alignment. The CEC prohibits APS from placing the line on lands owned by  
5 Diamond Ventures in this area, leaving a narrow corridor of 130 feet in which to thread  
6 the Project. While it might be physically possible to place the line within this narrow  
7 corridor, the typical right-of-way width for a single-pole structure 500/230kV transmission  
8 line is between 125 and 160 feet, with a maximum width of 200 feet. Application,  
9 Hearing Ex. A-1. Additionally, the costs associated with this limitation will not be known  
10 until after final designs are completed, which will occur after the conclusion of federal and  
11 other state approval processes.

12 **B. The requested revision is not a substantial change.**

13 APS acknowledges that this expanded corridor was not included in the notice of  
14 hearing and therefore the Commission would need to conclude that corridor expansion is  
15 not a "substantial change" under the standard adopted by the Commission to determine  
16 whether additional public notice and hearings are necessary.<sup>5</sup>

17 The key Commission case on substantial change is Commission Decision No. 58793  
18 (1994) known as the Whispering Ranch Decision. In that case, the Commission did not  
19 articulate a "bright line" definition of substantial change. Instead, it ruled that it is the  
20 responsibility of the Commission or Committee to decide whether a change is substantial  
21 or not based on the facts of each particular case using the criteria set forth in the  
22 Administrative Procedures Act (A.R.S. § 41-1025), as modified to apply to a CEC

23  
24 <sup>5</sup> The issue of expanding the corridor to provide screening opportunities for one intervenor while still  
25 avoiding the Diamond Ventures property, was first mentioned during Committee deliberations. While  
26 Chairman Foreman concluded that any expansion of the corridor in this area was a substantial change, he  
noted, "If I had more time and more information, I might be able to review that and come to a different  
conclusion." Tr. at 3472:12-13. With the benefit of time to consider the issue, the Commission can find  
that the expanded corridor is not a substantial change based on the information in the record.

1 application. Section 41-1025 addresses whether a revised proposed rule is substantially  
2 different from the published proposed rule using three factors:

- 3 1. The extent to which all persons affected by the rule should have  
4 understood that the published proposed rule would affect their interests.
- 5 2. The extent to which the subject matter of the rule or the issues  
6 determined by that rule are different from the subject matter or issues  
7 involved in the published proposed rule.
- 8 3. The extent to which the effects of the rule differ from the effects of the  
published proposed rule if it had been made instead. [A.R.S. § 41-  
1025(B)]

9 The requested corridor expansion is not a substantial change under this framework  
10 for analysis. First, the only party that would be affected by the revision is ASLD, which  
11 manages all of the land within the requested expansion of the corridor. ASLD not only  
12 understood the Project as noticed affected its interests, it intervened in this matter.  
13 Second, the subject matter of the corridor revision is identical to that of the noticed  
14 corridor in this area – the construction and operation of the Project on State Land located  
15 between the 179<sup>th</sup> Avenue and 163<sup>rd</sup> Avenue alignments. Third, the effects of the  
16 expanded corridor will likely be beneficial to ASLD because the revision would reduce the  
17 need for visible turning structures and ensure that the line can be placed on the Joy Ranch  
18 Road alignment.

19 Accordingly, because the requested corridor revision is not a substantial change  
20 from the corridor described in the public notice, the Commission has the authority to make  
21 the following revision to the CEC without an additional hearing:

22 Page 5, line 25, and page 6, line 1: Replace “1,500” with “2,350.”

23 ///

24 ///

25 ///

26 ///

1 **CONCLUSION**

2 Because there is substantial testimony and discussion in the sixteen-day hearing  
3 record on the limited issues raised in this Request for Review, APS is not requesting  
4 written briefing or oral argument concerning the issues raised herein.

5 APS respectfully requests that the Commission, after weighing the evidence under  
6 its independent balancing test under A.R.S. § 40-360.07, revise the CEC as requested. The  
7 requested modifications to the corridor description along SR 74 reflect the desires of the  
8 Committee and intervenors while acknowledging the need for the Project and the risks to  
9 the Commission, APS, and the public in the event that either BLM or ASLD approve a  
10 different route across the land that those entities manage or deny a right-of-way  
11 completely. In so doing, it best balances, in the public interest, the need for an adequate,  
12 economical and reliable supply of electric power with the desire to minimize the effect  
13 thereof on the environment and ecology of this state.

14 RESPECTFULLY submitted this 13<sup>th</sup> day of January, 2009.

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16   
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Attorneys for Arizona Public Service Company

21 **ORIGINAL** and twenty-five (25) copies  
22 of the foregoing filed this 13<sup>th</sup> day  
23 of January, 2009, with:

24 The Arizona Corporation Commission  
25 Utilities Division – Docket Control  
26 1200 W. Washington Street  
Phoenix, Arizona 85007



**COPY** of the foregoing  
served electronically this 13<sup>th</sup> day  
of January, 2009, to:

John Foreman, Chairman  
Arizona Power Plant and Transmission Line Siting Committee  
Office of the Attorney General  
PAD/CPA  
1275 W. Washington Street  
Phoenix, Arizona 85007

Charles H. Hains  
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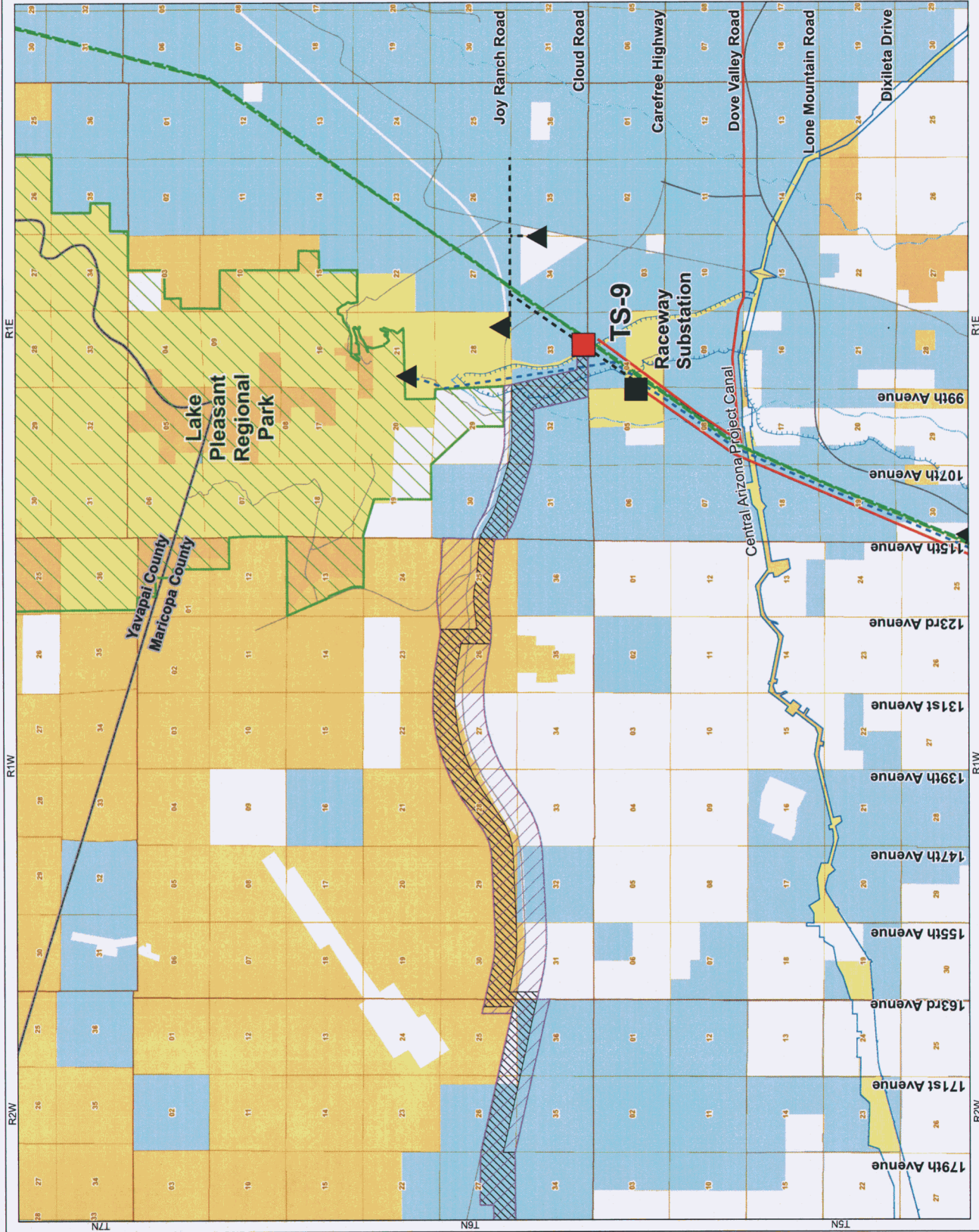
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*Betty J. Griffin*

# **ATTACHMENT 1**



**Certificated Corridor and Requested Modifications with Surface Management**  
TS-5 to TS-9 500/230kV Project

**Legend**

**Project Features**

- Certificated Corridor
- Requested Modifications

**Future Transmission Facilities**

- Approved High-Voltage Substation
- Approved High-Voltage Transmission Line

**Existing Transmission Facilities**

- Existing High-Voltage Substation
- Existing Substation
- Existing 500kV Transmission Line
- Existing 230kV Transmission Line
- Existing 69kV Transmission Line

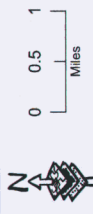
**Surface Management**

- Bureau of Land Management
- County Land
- Parks and Recreation
- Private Land
- State Trust Land

**General Reference Features**

- Major Road
- River or Stream
- Canal
- County Boundary
- Regional Park
- Central Arizona Project Canal
- Township and Range Line
- Section Line and Number

Source:  
Arizona State Land Department 2000, 2007  
URS Corporation 2007



# **ATTACHMENT 2**

BEFORE THE ARIZONA CORPORATION COMMISSION  
**DOCKETED**

CARL J. KUNASEK  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER

NOV 02 1999

DOCKETED BY

*sd*

IN THE MATTER OF SERVICE QUALITY  
ISSUES, ANALYSIS OF TRANSMISSION  
ALTERNATIVES AND PROPOSED PLAN OF  
ACTION IN THE SANTA CRUZ ELECTRIC  
DIVISION OF CITIZENS UTILITIES COMPANY.

DOCKET NO. E-01032A-99-0401

DECISION NO. 52011

**OPINION AND ORDER**

DATE OF HEARING: September 8, 1999

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Barbara M. Behun

APPEARANCES: Mr. Craig A. Marks, Associate General Counsel, Citizens  
Utilities Company, on behalf of Citizens Utilities Company;

Mr. Walter W. Meek, President, Arizona Utility Investors  
Association; and

Mr. Peter Breen, Staff Attorney, on behalf of the Utilities  
Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the  
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On October 20, 1998, Citizens Utilities Company, its divisions and subsidiaries  
("Citizens") filed with Docket Control of the Commission a notice of intent to form a holding  
company.<sup>1</sup>

2. Decision No. 61383 (January 29, 1999) directed Citizens to file an analysis of  
alternatives and Plan of Action to rectify the service problems in the Santa Cruz Electric Division, for  
approval at Open Meeting, and ordered that a hearing be held regarding Citizens' request.

3. By Procedural Order dated February 24, 1999, the holding company matter was

<sup>1</sup> The application was filed as Docket Nos. E-01032A-98-0611, *et al.*



1 scheduled for hearing on May 10, 1999.

2 4. Upon request by Citizens, the hearing was continued to September 8, 1999.

3 5. On October 27, 1998, the City of Nogales, Arizona filed a Complaint against Citizens  
4 concerning electrical outages in Nogales, Arizona.

5 6. Decision No. 61793 (June 29, 1999) dismissed the Complaint, with direction that  
6 Citizens would provide a planned service date and cost-benefit analysis for system components of a  
7 second transmission line in the Plan of Action to be filed in compliance with Decision No. 61383.

8 7. Intervention has been granted to the Arizona Payphone Association, the Residential  
9 Utility Consumer Office, and the Arizona Utility Investors Association ("AUIA").

10 8. On June 6, 1999, Citizens filed a letter in this docket, indicating that the proposed  
11 separation would not take place.

12 9. On June 16, 1999, Citizens requested clarification of procedural issues, due to the  
13 cancellation of the anticipated separation.

14 10. A Procedural Conference was held on July 12, 1999.

15 11. By Procedural Order dated July 15, 1999, the holding company docket was closed and  
16 this docket opened to resolve the Commission's concerns with respect to Citizens' Santa Cruz  
17 Electric Division. The hearing remained scheduled for September 8, 1999.

18 12. On August 9, 1999, the Commission's Utilities Division Staff ("Staff") and Citizens  
19 filed a Settlement Agreement regarding Citizens' Plan of Action.

20 13. On August 20, 1999, Staff and Citizens filed testimony in support of the Settlement  
21 Agreement.

22 14. A hearing was held on September 8, 1999, before a duly appointed Hearing Officer of  
23 the Commission, at which Citizens and Staff appeared through counsel and presented evidence. The  
24 AUIA appeared through its President, but did not present evidence.

25 15. The Settlement Agreement commits Citizens to a Plan of Action that is in compliance  
26 with Decision Nos. 61383 and 61793 and incorporates Staff recommendations contained in pre-filed  
27 testimony for those proceedings. The Settlement Agreement states that the Plan of Action includes  
28 Citizens' submittal of April 15, 1999, as supplemented on May 7, 1999 and July 13, 1999.

16. The Settlement Agreement requires Citizens to build a second transmission line to serve its customers in Santa Cruz County by December 31, 2003.

17. Citizens has agreed to file for a Certificate of Compatibility for the new line by November 11, 2000. The scheduled in-service date for the line is to be accelerated if an Environmental Impact Statement is not required. The Settlement Agreement also establishes a framework for penalties applicable if Citizens fails to perform in accordance with its proposed schedule.

18. If Citizens sells or divests its Santa Cruz Electric Division, the Settlement Agreement requires the acquiring entity to fulfill Citizens' obligations for the second transmission line as a condition of the Commission's approval of the sale.

19. The Settlement Agreement preserves Staff's right to challenge any capital expenditure Citizens accrues in the course of constructing its Plan of Action for the Santa Cruz Electric Division filed for these proceedings. Staff has already noted some expenditure concerns in prior testimony.

20. The parties agreed that a ruling on expenditures should be postponed until Citizens files to recover its investment cost from customers.

21. As agreed to by the parties, Item No. 7 in the Settlement Agreement should refer to Docket No. E-1032A-99-0401, not Docket No. E-1032A-99-041.

#### CONCLUSIONS OF LAW

1. Citizens is an Arizona public service corporation within the meaning of Article XV, Section 2, of the Arizona Constitution and A.R.S. § 40-246.

2. The Commission has jurisdiction over Citizens and over the subject matter of this docket.

3. Citizens' Plan of Action as filed on April 15, 1999, and supplemented on May 7, 1999 and July 13, 1999, complies with Decision Nos. 61383 and 61793.

4. The Settlement Agreement filed by the parties on August 9, 1999 is in the public interest and will be adopted by the Commission, with the correction as indicated in Findings of Fact No. 21.

...


ORDER

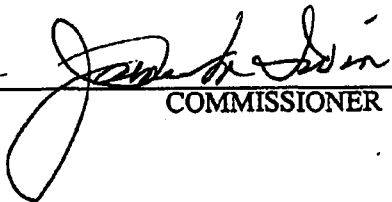
IT IS THEREFORE ORDERED the Settlement Agreement filed on August 9, 1999 by Commission Staff and Citizens Utilities Companies shall be, and is hereby, adopted by the Commission, with the correction indicated in Findings of Fact No. 21.


IT IS FURTHER ORDERED that Citizens Utilities Company is ordered to comply with the requirements of the Settlement Agreement.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

  
CHAIRMAN

  
COMMISSIONER

  
COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 2<sup>nd</sup> day of November, 1999.

  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT  
BMB:dap

1 SERVICE LIST FOR: CITIZENS UTILITES DIVISION (SANTA CRUZ  
2 ELECTRIC DIVISION)  
3 DOCKET NO.: E-01032A-99-0401  
4 Raymond Heyman  
5 ROSHKA, HEYMAN & DeWULF  
6 Two Arizona Center  
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7 Barbara Wytaske, Acting Director  
8 RUCO  
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9 Phoenix, Arizona 85004  
10 Walter Meek, President  
ARIZONA UTILITIES INVESTORS ASSOCIATION  
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12 Paul A. Bullis, Chief Counsel  
13 LEGAL DIVISION  
1200 W. Washington Street  
14 Phoenix, Arizona 85007  
15 Deborah Scott, Director  
UTILITIES DIVISION  
16 ARIZONA CORPORATION COMMISSION  
1200 W. Washington Street  
17 Phoenix, Arizona 85007  
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# **ATTACHMENT 3**

ORIGINAL



**UniSource Energy**

UniSource Energy Corporation  
One South Church Avenue, Suite 1820  
Tucson, Arizona 85701

Philip J. Dion  
Vice President, Legal and  
Environmental Services

RECEIVED

7000 JUL 30 P 1:25

Direct Line: (520) 884-3708

Fax: (520) 545-1471

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

July 30, 2008

Mr. Ernest Johnson, Director  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington St.  
Phoenix, AZ 85007

Arizona Corporation Commission  
**DOCKETED**

JUL 30 2008

Re: Self-Certification Letter for 2008 (Decision No. 64356)  
Docket Nos. L-00000C-01-0111  
L-00000F-01-0111

DOCKETED BY	mn
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Dear Mr. Johnson:

Tucson Electric Power Company ("TEP") and UNS Electric, Inc. ("UNS Electric"), pursuant to Condition No. 29 of Decision No. 64356, as amended by Decision No. 67151, hereby submit their Self-Certification Letter for the period ending June 30, 2008.

In Decision No. 64356, the Arizona Corporation Commission (the "Commission") affirmed the Certificate of Environmental Compatibility ("CEC") issued to TEP and UNS Electric for the construction of a 345 kV transmission line system from TEP's South 345 kV Substation in Sahuarita, Arizona to the proposed Gateway 345/115 kV Substation in Nogales, Arizona, with a 115 kV interconnection to the 115 kV Valencia Substation and a 345 kV line to the international border ("Joint Transmission Project"). Condition No. 29 to the CEC states:

The Applicants, their successor(s) or assignee(s) shall submit a self-certification letter annually, identifying which conditions contained in the CEC as amended, have been met. Each letter shall be submitted to the Utilities Director on August 1, beginning in 2002, describing the conditions that have been met as of June 30. Attached to each certification letter shall be documentation explaining, in detail, how compliance with each condition was achieved. Copies of each letter, along with the corresponding documentation, shall also be submitted to the Arizona Attorney General and the Director of Environmental Quality, Department of Water, and Resources and Department of Commerce Energy Office

Some of the conditions to the CEC are applicable to later stages of the Joint Transmission Project and, therefore, were not intended to be completed within this reporting period. Other conditions require ongoing compliance and, while the terms may be met on an ongoing basis, were not completed during this reporting period. Consequently, the omission of (a) a mention of any condition from the Self-Certification Letter, or (b) documentation supporting efforts undertaken in connection with a condition, should not be construed as an assertion or admission that TEP and UNS Electric are not in compliance with any such condition.

**In Decision No. 67151, the Commission in Finding of Fact 13 adopted the following Staff recommendations:**

- a. The annual TEP and UES self-certification letter due to the Commission on August 1 per Decision No. 64356, Condition No. 29, must include:
  - i. Documentation by TEP and UES of how they have expended every effort to expedite the timely resolution of the federal FEIS and permitting processes; and
  - ii. Documentation by TEP and UES of how they have expended every reasonable effort to expedite and timely obtain from all state, county and local government agencies, especially the State and Land Department, all required approvals and permits necessary to construct the project as defined in Condition 1 of their CEC.

**Status:**

- i. Federal applications for rights-of-way pursuant to provisions of Pub.Law 109-58 (2005) were filed with the appropriate federal agencies in February 2006. Copies of these filings were filed in this Docket.
- ii. Because the federal right-of-way issues are unresolved, no further state or local permits have been sought or received at this time. TEP continues to meet with the Forest Service, the Arizona State Land Department and a major landowner to discuss possible modifications to the CEC-authorized route.

RESPECTFULLY SUBMITTED this 30th day of July, 2008.

TUCSON ELECTRIC POWER COMPANY  
and ~~UNS~~ ELECTRIC, INC.



Philip J. Dion  
Vice President, Legal and Environmental Services

**Original and 15 copies of the foregoing  
filed this 30<sup>th</sup> day of July, 2008, at:**

Docket Control  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

**Copies of the foregoing mailed this  
30<sup>th</sup> day of July 2008, to:**

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OFFICE OF THE ATTORNEY GENERAL  
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Phoenix, Arizona 85007

Herbert R. Guenther, Director  
ARIZONA DEPARTMENT OF WATER RESOURCES  
3550 North Central Avenue  
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Stephen A. Owens, Director  
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1110 West Washington Street  
Phoenix, Arizona 85007

ARIZONA DEPARTMENT OF COMMERCE  
Energy Office  
1700 West Washington Street, Suite 220  
Phoenix, Arizona 85007

By: Abbie Amual



# **ATTACHMENT 4**

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman  
4 WILLIAM A. MUNDELL  
5 MARC SPITZER  
6 MIKE GLEASON  
7 KRISTIN K. MAYES

Arizona Corporation Commission

**DOCKETED**

JAN 20 2005

DOCKETED BY

nr

2 ICE  
CD

8 IN THE MATTER OF THE JOINT APPLICATION  
9 OF TUCSON ELECTRIC POWER COMPANY  
10 AND CITIZENS COMMUNICATIONS  
11 COMPANY FOR A CERTIFICATE OF  
12 ENVIRONMENTAL COMPATIBILITY FOR A  
13 PROPOSED 345 KV TRANSMISSION LINE  
14 SYSTEM FROM TUCSON ELECTRIC POWER  
15 COMPANY'S EXISTING SOUTH 345 KV  
16 SUBSTATION IN SEC. 36, T. 16S., R.13E,  
17 SAHUARITA, ARIZONA, TO THE PROPOSED  
18 GATEWAY 345/115 KV SUBSTATION IN SEC.  
19 12, T.24S., R.13E., NOGALES, ARIZONA WITH A  
20 115 KV INTERCONNECTION TO THE CITIZENS  
21 COMMUNICATIONS COMPANY'S 115 KV  
22 VALENCIA SUBSTATION IN NOGALES,  
23 ARIZONA, WITH A 345 KV TRANSMISSION  
24 LINE FROM THE PROPOSED GATEWAY  
25 SUBSTATION SOUTH TO THE  
26 INTERNATIONAL BORDER IN SEC. 13, T.24S.,  
27 R.13E.

DOCKET NO. L-00000C-01-0111  
DOCKET NO. L-00000F-01-0111

DECISION NO. 67509

**ORDER**

27 Open Meeting  
28 January 11 and 12, 2005  
Phoenix, Arizona

**BY THE COMMISSION:**

On December 3, 2004, Tucson Electric Power Company ("TEP") and UniSource Energy Services, Inc. ("UES") (collectively, "Joint Applicants") filed a Motion to Extend Time Limitation of Certificate of Environmental Compatibility ("Motion").<sup>1</sup>

In their Motion, the Joint Applicants ask that the Arizona Corporation Commission ("Commission"):

1. Extend the time limitation of the CEC, prior to January 15, 2005;

<sup>1</sup> The Motion was captioned using the docket numbers from the CEC application as well as Docket No. E-01032A-99-0401, a docket concerning service quality and other issues in Santa Cruz County, however, the dockets have not been consolidated, and separate orders will be issued for each docket.

2. Re-open the record in consolidated Docket Nos. L-00000C-01-0111 and L-00000F-01-0111 for the limited purpose of reviewing alternatives to the approved Preferred Route based upon information that has come to light after the issuance of Decision No. 64356<sup>2</sup>;
3. Convene a procedural conference to establish the scope, forum and schedule for the proceeding in the re-opened consolidated dockets; and
4. Waive the requirement in Decision No. 67151 (August 3, 2004) that the Federal Agency Records of Decision ("RODs") be provided with this Motion.

On December 14, 2004, the Commission's Utilities Division Staff ("Staff") filed a Response to the Joint Applicant's Motion.

In its Response, Staff requests that the Commission:

1. Grant an indefinite extension of time for the CEC beyond January 15, 2005, until the conclusion of all proceedings related to Docket Nos. E-01032A-99-0401, L-00000C-01-0111 and L-00000F-01-0111.
2. Bifurcate Dockets Nos. L-00000C-01-0111 and L-00000F-01-0111 from Docket No. E-01032A-99-0401, and send the former dockets back to the Arizona Power Plant and Transmission Line Siting Committee ("Committee").
3. For Docket No. E-01032A-99-0401, establish a procedural schedule, including the filing of pre-filed testimony by UES and TEP, and from any intervenors, and a Staff Report.
4. Grant the request by TEP and UES to waive the requirement that RODs be filed with their motion, so long as the final EIS and any corresponding RODs are filed by them as soon as they are publicly available.

#### **BACKGROUND**

On October 20, 1998, Citizens Utilities Company ("Citizens") filed with the Commission a notice of intent to form a holding company (Docket No. E-01032A-98-0611 et al). During the course

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<sup>2</sup> See Reporter's Special Open Meeting Transcript of Proceedings at 126.

1 of reviewing Citizens' application, the Commission issued Decision No. 61383 (January 29, 1999)  
2 which ordered Citizens to file an "Analysis of Alternatives and Plan of Action (Plan) to rectify the  
3 service problems in its Santa Cruz Electric Division. . . [t]he Plan should include a cost-benefit  
4 analysis of alternatives, the alternative chosen and proposed deadlines for implementation of the  
5 alternative chosen." (Decision No. 61383 at 2) In June of 1999, Citizens notified the Commission  
6 that the proposed reorganization would not take place, and by Procedural Order issued July 15, 1999,  
7 the holding company docket was closed and Docket No. E-0132A-99-0401 (the "Service Quality"  
8 docket) was opened to resolve the Commission's concerns regarding Citizens' Santa Cruz Electric  
9 Division.

10 On October 27, 1998, the City of Nogales, Arizona, filed a Complaint against Citizens  
11 concerning electrical outages in Nogales, Arizona (Docket No. E-01032B-98-0621). In its  
12 Complaint, the City of Nogales alleged that numerous electric outages caused by Citizens' failure to  
13 adequately maintain its transmission lines and back-up generation capacity had resulted in economic  
14 damages to Nogales and its residents and endangered the community's welfare. The City of Nogales  
15 and Citizens entered into a Settlement Agreement, and in Decision No. 61793 (June 29, 1999), the  
16 Commission dismissed the Complaint and ordered that Citizens provide a planned service date and  
17 cost-benefit analysis for system components of a second transmission line in the Plan of Action to be  
18 filed in compliance with Decision No. 61383.

19 In August 1999, the Commission's Utilities Division Staff and Citizens filed a Settlement  
20 Agreement regarding Citizens' Plan of Action, in the Service Quality Docket. The Settlement  
21 Agreement, which was approved by the Commission in Decision No. 62011 (November 2, 1999),  
22 committed Citizens to a Plan of Action which included a requirement that Citizens build a second  
23 transmission line to serve its customers in Santa Cruz County by December 31, 2003; established a  
24 schedule for obtaining a Certificate of Environmental Compatibility ("CEC") and penalties if the  
25 schedule is not met; required an acquiring entity to fulfill Citizens' obligation for a second  
26 transmission line; preserved Staff's right to challenge any capital expenditure associated with  
27 constructing the Plan of Action; and adopted the parties' agreement that a ruling on expenditures  
28 should be postponed until a filing is made to recover costs.

1 On March 1, 2001, TEP and Citizens filed a Joint Application for a CEC. In Decision No.  
2 64356 (January 15, 2002), the Commission granted the CEC to construct the proposed Gateway 345  
3 kV and 115kV Transmission Project ("Gateway Project" or "Project") for the preferred western  
4 route, which had been granted by the Committee. The Gateway Project incorporated the second  
5 transmission line required by Decision No. 62011. Need for the Gateway Project was established in  
6 that docket.

7 On August 5, 2003, TEP and Citizens filed a "Joint Application for Delay of the In-Service  
8 Deadline, or in the Alternative, Waiver of Penalties and For Other Appropriate Relief" in the Service  
9 Quality Docket. The Joint Applicants stated that additional time was necessary to obtain the required  
10 approvals from federal agencies. On October 10, 2003, TEP and UniSource Electric, Inc. ("UNS  
11 Electric") filed a supplement.<sup>3</sup> The supplement proposed to provide short-term relief until the second  
12 transmission line was constructed and became operational. In Decision No. 66615 (December 10,  
13 2003), the Commission waived the penalty provided for in the Settlement Agreement approved in  
14 Decision No. 62011, until June 1, 2004; ordered TEP and UNS Electric to submit an updated "Outage  
15 Response Plan"; and ordered Staff to file a Report on the sufficiency of the updated Outage Response  
16 Plan.

17 On February 9, 2004, TEP and UniSource Energy Services, Inc. ("UES") filed their updated  
18 Outage Response Plan and on March 11 and May 27, 2004, Staff filed its Staff Reports regarding the  
19 sufficiency of the updated Outage Response Plan.

20 On July 23, 2004, Defenders of Wildlife & Sky Island Alliance filed an "Application to  
21 Rescind Decision No. 64356 (Dockets L-00000C-01-0111 and L-00000F-01-0111) and to Reopen for  
22 Consideration The Fulfillment of Decision No. 62011".

23 On July 28, 2004, the Commission held a Special Open Meeting in Tucson, Arizona to review  
24 the status of compliance with Decision No. 62011 and the requested waiver of penalties. During the  
25 Special Open Meeting, the Commissioners discussed whether intervening circumstances, the passage  
26 of time, and what may be inconsistent results reached by the Committee and the Department of  
27

28 <sup>3</sup> Citizens sold its assets to UniSource Energy Corporation ("UNS") which formed UniSource Energy Services, Inc. (UES"). UNS is also the parent holding company for TEP. Citizens' CEC was transferred to UES.

1 Agriculture Forest Service necessitate the re-opening of the record in the Line Siting dockets. The  
2 Commissioners directed TEP and UES to reopen the docket in Decision No. 64356 granting the  
3 CEC.<sup>4</sup> Further, the Commissioners discussed the issues of reliability and need for a second  
4 transmission line, and indicated that these issues were appropriate for a hearing before a Commission  
5 Administrative Law Judge. The Commissioners expressed an interest in having this issue handled on  
6 a faster track, and invited parties to file pleadings in the event that they thought there were alternative  
7 ideas relating to the reliability issue in Santa Cruz County.<sup>5</sup> No such pleadings have been filed since  
8 the Special Open Meeting.

9 On August 3, 2004, the Commission issued Decision No. 67151 which waived the penalty  
10 provision of the Settlement Agreement approved in Decision No. 62011 indefinitely, subject to  
11 numerous conditions contained in the order.

#### 12 DISCUSSION

13 Decision No. 64356 affirming the grant of the CEC contained a condition that authorization to  
14 construct the Project would expire three years from the date of the Decision. In Decision No. 67151,  
15 issued in August of 2004, the Commission authorized the Joint Applicants to seek an extension of  
16 that time limit. Without an extension, the CEC would expire January 15, 2005. Staff believes that  
17 since the Commission wants the record in the dockets to be re-opened to review information that has  
18 come to light after the CEC was granted, extending the time beyond January 15, 2005 is appropriate.  
19 Further, certain Federal Agencies must grant approval or permits prior to construction. No party to  
20 the dockets has objected to either the re-opening of the dockets, nor to the extension of the CEC  
21 approval.

22 Given the intervening circumstances, the passage of time, and what may be inconsistent  
23 results reached by the Power Plant and Transmission Line Siting Committee and the Federal  
24 Agencies, including the Department of Agriculture Forest Service, the record in Dockets L-00000C-  
25 01-0111 and L-00000F-01-0111 should be re-opened and referred to the Committee for further fact  
26 finding, review, and consideration.

27 \_\_\_\_\_  
28 <sup>4</sup> Transcript at 53, 54, 55

<sup>5</sup> Transcript at 54

Although Decision No. 67151 indicated that a completed Federal Environmental Impact Statement ("EIS") and associated Records of Decisions should be filed with a motion for extension of time limit, the Joint Applicants were unable to file such documents because they are not yet available. Accordingly, we will require the Joint Applicants to file the EIS and any RODs as soon as they are publicly available.

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

**FINDINGS OF FACT**

1. In Decision No. 62011 (November 2, 1999), the Commission approved a Settlement Agreement between Staff and Citizens which committed Citizens to a Plan of Action which included a requirement that Citizens build a second transmission line to serve its customers in Santa Cruz County by December 31, 2003; established a schedule for obtaining a CEC and penalties if the schedule is not met; required an acquiring entity to fulfill Citizens' obligation for a second transmission line; preserved Staff's right to challenge any capital expenditure associated with constructing the Plan of Action; and adopted the parties' agreement that a ruling on expenditures should be postponed until a filing is made to recover costs.

2. On March 1, 2001, TEP and Citizens filed a Joint Application for a CEC.

3. In Decision No. 64356 (January 15, 2002), the Commission granted the CEC to construct the proposed Gateway 345 kV and 115kV Transmission Project for the preferred western route, which had been granted by the Arizona Power Plant and Transmission Line Siting Committee. The Gateway Project incorporated the second transmission line required by Decision No. 62011.

4. On August 5, 2003, TEP and Citizens filed a "Joint Application for Delay of the In-Service Deadline, or in the Alternative, Waiver of Penalties and For Other Appropriate Relief" in the Service Quality Docket.

5. On October 10, 2003, TEP and UNS Electric filed a supplement.

6. In Decision No. 66615 (December 10, 2003), the Commission waived the penalty provided for in the Settlement Agreement approved in Decision No. 62011, until June 1, 2004;

1 ordered TEP and UNS Electric to submit an updated "Outage Response Plan"; and ordered Staff to  
2 file a Report on the sufficiency of the updated Outage Response Plan.

3 7. On February 9, 2004, TEP and UES filed their updated Outage Response Plan and on  
4 March 11 and May 27, 2004, Staff filed its Staff Reports regarding the sufficiency of the updated  
5 Outage Response Plan.

6 8. On July 23, 2004, Defenders of Wildlife & Sky Island Alliance filed an Application to  
7 Rescind Decision No. 64356 (Dockets L-00000C-01-0111 and L-00000F-01-0111) and to Reopen for  
8 Consideration The Fulfillment of Decision No. 62011.

9 9. On July 28, 2004, the Commission held a Special Open Meeting in Tucson, Arizona to  
10 review the status of compliance with Decision No. 62011 and the requested waiver of penalties.  
11 During the Special Open Meeting, the Commissioners discussed whether intervening circumstances,  
12 the passage of time, and what may be inconsistent results reached by the Line Siting Committee and  
13 the Department of Agriculture Forest Service necessitate the re-opening of the record in the Line  
14 Siting docket. The Commissioners directed TEP and UES to reopen the docket in Decision No.  
15 64356 granting the CEC.

16 10. On August 3, 2004, the Commission issued Decision No. 67151 which waived the  
17 penalty provision of the Settlement Agreement approved in Decision No. 62011 indefinitely, subject  
18 to numerous conditions contained in the order.

19 11. On December 3, 2004, the Joint Applicants filed a Motion to Extend Time Limitation  
20 of Certificate of Environmental Compatibility.

21 12. In their Motion, the Joint Applicants ask that the Commission: 1) extend the time  
22 limitation of the CEC, prior to January 15, 2005; 2) re-open the record in consolidated Docket Nos.  
23 L-00000C-01-0111 and L-00000F-01-0111 for the limited purpose of reviewing alternatives to the  
24 approved Preferred Route based upon information that has come to light after the issuance of  
25 Decision No. 64356; 3) convene a procedural conference to establish the scope, forum and schedule  
26 for the proceeding in the re-opened consolidated dockets; and 4) waive the requirement in Decision  
27 No. 67151 (August 3, 2004) that the Federal Agency Records of Decision be provided with the  
28 Motion.



13. On December 14, 2004, Staff filed a Response to the Joint Applicants' Motion requesting that the Commission: 1) grant an indefinite extension of time for the CEC beyond January 15, 2005, until the conclusion of all proceedings related to Docket Nos. E-01032A-99-0401, L-00000C-01-0111 and L-00000F-01-0111; 2) Bifurcate Dockets Nos. L-00000C-01-0111 and L-00000F-01-0111 from Docket No. E-01032A-99-0401, and send the former dockets back to the Committee; 3) for Docket No. E-01032A-99-0401, establish a procedural schedule, including the filing of pre-filed testimony by UES and TEP, and from any intervenors, and a Staff Report; 4) grant the request by TEP and UES to waive the requirement that RODs be filed with their motion, so long as the final EIS and any corresponding RODs are filed by them as soon as they are publicly available.

14. Given the intervening circumstances, the passage of time, and what may be inconsistent results reached by the Power Plant and Transmission Line Siting Committee and the Federal Agencies, including the Department of Agriculture Forest Service, the record in Dockets L-00000C-01-0111 and L-00000F-01-0111 should be re-opened and referred to the Line Siting for further fact finding, review, and consideration.

15. Pursuant to Decision No. 67151, the Joint Applicants were to have filed the completed Federal EIS and associated RODs with the motion for extension of time limit, however, the Joint Applicants were unable to file such documents because they are not yet unavailable.

16. The Joint Applicants should file the EIS and any RODs as soon as they are publicly available.

### CONCLUSIONS OF LAW

1. TEP and UNS Electric are public service corporations within the meaning of Article XV, Section 2 of the Arizona Constitution.

2. The Commission has jurisdiction over TEP and UNS Electric and over the subject matter of this docket.

3. There is good cause to grant the Motion to Extend Time Limitation of Certificate of Environmental Compatibility.

4. There is good cause to waive the requirement of Decision No. 67151 that Federal Agency Records of Decision and Federal Environmental Impact Statement accompany the Motion to

1 Extend Time Limitation.

2 5. There is good cause to re-open the record in Docket Nos. L-00000C-01-0111 and L-  
3 00000F-01-0111 to review alternatives to the approved Preferred Route based upon information that  
4 has come to light after the issuance of Decision No. 64356 and to review the evidence presented in  
5 Docket No. E-01032A-99-0401, pursuant to A.R.S. § 40-252.

6 6. Pursuant to A.R.S. § 40-360.06, the Committee and the Commission will review the  
7 new information and make the appropriate determinations.

8 **ORDER**

9 IT IS THEREFORE ORDERED that the Motion to Extend Time Limitation of Certificate of  
10 Environmental Compatibility is granted and the authorization to construct the Project will expire one  
11 year from the date that all required approvals have been obtained.

12 IT IS FURTHER ORDERED that Docket Nos. L-00000C-01-0111 and L-00000F-01-0111  
13 are re-opened and referred to the Power Plant and Transmission Line Siting Committee to review  
14 alternatives to the approved Preferred Route based upon information that has come to light after the  
15 issuance of Decision No. 64356 and to review the evidence presented in Docket No. E-01032A-99-  
16 0401, pursuant to A.R.S. § 40-252.

17 IT IS FURTHER ORDERED that neither Tucson Electric Power nor UniSource shall  
18 commence construction of a second transmission line to Santa Cruz County until a new decision is  
19 issued in Docket Nos. L-00000C-01-0111 and L-00000F-01-0111.

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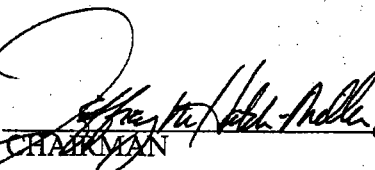
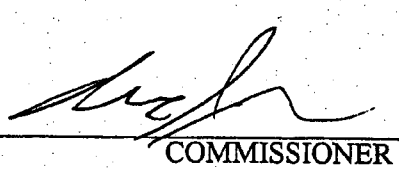
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1 IT IS FURTHER ORDERED that TEP and UNS Electric shall file the final Environmental  
2 Impact Statement and any Federal Agencies Records of Decisions with the Commission as soon as  
3 they are made publicly available.

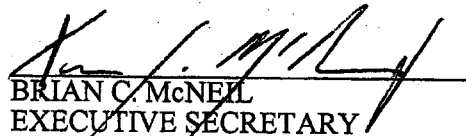
4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
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9  CHAIRMAN  COMMISSIONER  COMMISSIONER

10  
11  COMMISSIONER  COMMISSIONER  
12

13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
14 Secretary of the Arizona Corporation Commission, have  
15 hereunto set my hand and caused the official seal of the  
16 Commission to be affixed at the Capitol, in the City of Phoenix,  
17 this 30<sup>th</sup> day of Jan., 2005.

18   
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

19 DISSENT \_\_\_\_\_  
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21 DISSENT \_\_\_\_\_  
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1 SERVICE LIST FOR:

TUCSON ELECTRIC POWER COMPANY et al.

2 DOCKET NOS.:

L-00000C-01-0111, L-00000F-01-0111

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